

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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E. JEAN CARROLL,

Plaintiff,

New York, N.Y.

v.

22 Civ.10016 (LAK)

DONALD J. TRUMP,

Defendant.

-----x

Jury Trial

April 25, 2023
9:55 a.m.

Before:

HON. LEWIS A. KAPLAN,

District Judge
and a Jury

APPEARANCES

KAPLAN HECKER & FINK LLP
Attorneys for Plaintiff
BY: ROBERTA A. KAPLAN
MICHAEL J. FERRARA
SHAWN G. CROWLEY
MATTHEW J. CRAIG

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W. PERRY BRANDT
Attorney for Defendant

1 whatever he wanted to.

2 Donald Trump has said: I've never met E. Jean
3 Carroll. I never went to Bergdorf's. She's not my type. As
4 the evidence will show, these are lies, and they are just some
5 of the lies that you will hear from Donald Trump throughout
6 this trial.

7 I am going to sit down in a minute, but before I do, I
8 want to say a word about what you are going to be asked to
9 decide at the end of this trial, once you have heard from all
10 of the witnesses and the evidence is in. As Judge Kaplan told
11 you and as he will explain in more detail before you
12 deliberate, Ms. Carroll brought two claims against Donald
13 Trump, so there will be two claims that you need to decide.

14 The first claim, as Judge Kaplan described, is for
15 what's called battery, and that has to do with what happened in
16 the Bergdorf Goodman dressing room back in 1996. I expect that
17 Judge Kaplan will instruct you that battery covers a range of
18 conduct, from forcibly grabbing or groping someone without
19 their consent to rape. If you find that Donald Trump did any
20 one of those things, he is liable for battery.

21 Ms. Carroll's second claim, as Judge Kaplan said, is
22 for defamation. That has to do with the harm that Donald Trump
23 did to Ms. Carroll's reputation and good name. The key
24 question for that claim is whether Trump was lying in that
25 October 2022 Truth Social post that you saw, whether he was

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E. JEAN CARROLL,

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22 Civ.10016 (LAK)

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Jury Trial

April 26, 2023
10:10 a.m.

Before:

HON. LEWIS A. KAPLAN,

District Judge
and a Jury

APPEARANCES

KAPLAN HECKER & FINK LLP
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W. PERRY BRANDT
Attorney for Defendant

1 to Bergdorf's?

2 A. I am guessing that it was a sale.

3 Q. Do you recall sitting here today?

4 A. No.

5 Q. Did you buy anything that day?

6 A. I don't think I did because I didn't have carrier bags with
7 me. I didn't have shopping bags.

8 Q. Do you recall how long you were in the store?

9 A. No.

10 Q. When did you first see Mr. Trump that day?

11 A. I was leaving the store, and I was exiting the 58th Street
12 entrance, and I was just about to go out the door. He was
13 standing on the other side of it and put up his hand.

14 Q. You're putting up your hand to indicate what, Ms. Carroll,
15 so it's clear?

16 A. It's universal signal for stop.

17 Q. What did you do?

18 A. I stopped.

19 Q. What happened next?

20 A. And he came through the door and he said, hey, you are that
21 advice lady.

22 Q. How did you respond?

23 A. I said, hey, you're that real estate tycoon.

24 Q. What was your impression of Donald Trump at that time when
25 you saw him at Bergdorf's?

1 A. Very personable, engaging.

2 Q. What happened after you said, hey, you're that real estate
3 tycoon?

4 A. He said, I need to buy a gift, come help me. Come help me.
5 Come advise me.

6 Q. Did you agree?

7 A. I was delighted.

8 Q. Why?

9 A. Well, it was such a funny New York scene. I'm a born
10 advice columnist. I love to give advice, and here was Donald
11 Trump asking me for advice about buying a present. It was a
12 wonderful prospect for me.

13 Q. Who was he shopping for, if you know?

14 A. I asked him. I said: Who is it for? He said: A girl.
15 And then I asked him, trying to figure out who it would be:
16 How old is she? And he replied with: How old are you?

17 Q. What did you say?

18 A. I said 52.

19 Q. How did he respond?

20 A. He said: You are so old.

21 Q. Was that in a fresh way or in a sort of teasing way?

22 A. No. It was humorous the way he said it.

23 Q. What did the two of you do next?

24 A. At the time, in '96, the little circular alcove we were
25 standing in had displayed three or four handbags, which were so

1 beautiful and such works of art I thought, wow, any girl would
2 love one of these handbags. But he didn't like the idea of a
3 handbag. So we went -- we turned to the left, went walk
4 through the first floor to the hats. I thought a hat would be
5 great, and she is going to love a hat.

6 Q. As far as you were able to tell -- what floor of Bergdorf
7 were you on at this point?

8 A. First floor.

9 Q. As far as you were able to tell, did anyone recognize you
10 or Mr. Trump?

11 A. There was a shopper. She was tiny, because I remember her
12 staring up at him in awe. She recognized him. He was very
13 pleasant.

14 Q. Anyone else?

15 A. There was a sales attendant, and she was also very pleased
16 to see him. He was pleased to see her.

17 Q. What, if any, words did they exchange?

18 A. I think he said hello, how are you doing, how are you.

19 Q. What happened after hats?

20 A. He was holding -- he picked up a hat that was a fur hat and
21 he was petting it like a little cat or a dog. And as he was
22 petting it he said, I know, lingerie.

23 Q. Lingerie meaning underwear?

24 A. Yes.

25 Q. Where was the lingerie -- the lingerie section, I guess, in

1 the store? Where was that located?

2 A. I didn't know where it was. I do now know where it is.

3 But he led the way to the escalator, and we started to go up
4 the escalator.

5 Q. What floor do you recall lingerie being on at that time?

6 A. Six.

7 Q. Was there anything sort of discomfoting to you about the
8 fact that Mr. Trump had proposed the lingerie?

9 A. No. By this time -- first of all, he was very talkative.
10 In the escalator he talked about how great Bergdorf's was. At
11 one time he was thinking of buying Bergdorf's. I was
12 absolutely enchanted -- I could only think of it as a scene,
13 such a great story, so I was delighted to go to lingerie with
14 him.

15 Q. Were you chatting --

16 A. Yes. He was very funny, yeah.

17 Q. Do you recall what the two of you were discussing as you
18 made your way to the lingerie area?

19 A. He was talking about Bergdorf's. I don't remember
20 precisely.

21 Q. What was the tone of the conversation?

22 A. Very joshing and light.

23 Q. Who, if anyone else, in the store did you see as you rode
24 up to the lingerie area?

25 A. I wasn't looking. I was watching him and watching that I

1 Q. In your mind, at the time, Ms. Carroll, had things --
2 withdrawn.

3 Had you been flirting sort of much this time with
4 Mr. Trump?

5 A. Yeah. I was flirting the whole time, probably.

6 Q. At this point now, when Mr. Trump has proposed going to the
7 dressing room, have things escalated in your mind?

8 A. The comedy was escalating, and I thought it was getting
9 funnier and funnier.

10 Q. Did you ever think about saying, no, I'm not going in?

11 A. No. It didn't occur to me. I didn't really think about
12 going into the dressing room. I thought of it as sort of an
13 open area. I thought the door was open, we walked in. I
14 didn't picture anything about what was about to happen. Didn't
15 picture it.

16 Q. What happened once you -- first off, was the dressing room
17 open or closed?

18 A. The door was opened. That open door has plagued me for
19 years because I just walked into it, just walked in.

20 Q. Let's take it one step at a time. What happened once you
21 entered the dressing room?

22 A. He immediately shut the door and shoved me up against the
23 wall and shoved me so hard my head banged.

24 Q. What were you thinking at that moment?

25 A. I was extremely confused and suddenly realizing that what I

1 A. I remember him being -- he was very large, and his whole
2 weight came against my chest and held me up there, and he
3 leaned down and pulled down my tights.

4 Q. What, if anything, were you doing while that was happening?

5 A. I was pushing him back. It was quite clear that I was not
6 going -- I didn't want anything else to happen. It was quite
7 clear. I pushed him back. This arm was pinned down. This arm
8 had my purse. Trying to get him back.

9 Q. At any point during this encounter, do you recall saying
10 no?

11 A. No, I don't recall saying it. I may have said it.

12 MR. FERRARA: Just one moment, your Honor.

13 Q. At any point during this encounter did you scream?

14 A. I don't remember screaming. I'm not a screamer. I'm a
15 fighter. I'm much more physical than I am vocal.

16 Q. What about his head? What is happening?

17 A. His head was beside mine breathing. First, he put his
18 mouth against me.

19 Q. Do you mean he kissed you?

20 A. Yes.

21 Q. Did you kiss him back?

22 A. No. I didn't consider it a kiss. It was such -- it was a
23 shocking thing for him to suddenly put his mouth against mine.
24 I thought what. What. What. No.

25 Q. Do you think -- based on what you were experiencing, do you

1 believe that if someone had been nearby, they would have been
2 able to hear what was happening in the dressing room?

3 A. They would have heard the head hitting and definitely would
4 have heard me laughing.

5 Q. You described Mr. Trump as a -- you described Mr. Trump as
6 sort of, I think, larger than you?

7 A. Yeah.

8 Q. Do you recall approximately what the difference or how tall
9 are you?

10 A. At the time I was five-nine. Because I'm 79, I have sort
11 of all compacted down due to gravity, but at the time I was
12 five-nine. I was wearing four-inch heels. So it put me about
13 level with Donald Trump, who I think is six-two. I was
14 six-one. And I weighed at the time about 120, and I believe he
15 weighed about 100 more pounds.

16 Q. Were you afraid while this was happening?

17 A. I was in -- this is going to sound strange. I was almost
18 too frightened to think if I was afraid or not. I was
19 stamping. My whole reason for being alive in that moment was
20 to get out of that room.

21 Q. How were you trying to accomplish that?

22 A. Stamping and trying to wiggle out from under him. But he
23 had pulled down my tights and his hand went -- his fingers went
24 into my vagina, which was extremely painful, extremely painful.
25 It was a horrible feeling because he curved, he put his hand

1 inside of me and curved his finger. As I'm sitting here today,
2 I can still feel it. It was --

3 Q. Then what happened?

4 A. Then he inserted his penis.

5 Q. What did you do in that moment?

6 A. I tried --

7 Q. Do you need a moment, Ms. Carroll?

8 A. You asked me what I did in that moment. I always think
9 back to why I walked in there to get myself in that situation,
10 but I'm proud to say I did get out. I got my knee up. I got
11 my knee up and pushed him back.

12 Q. Was anything in your hands?

13 A. My handbag.

14 Q. Why were you holding your handbag?

15 A. I have no idea.

16 Q. I want to be -- I want to make sure I understand it.

17 How were you able to -- were you able to see what
18 Mr. Trump was doing with his hand, or are you telling us what
19 you experienced sort of physically by feeling it?

20 A. He was against me, his whole shoulder -- I couldn't see
21 anything. I couldn't see anything that was happening. But I
22 could certainly feel it. I could certainly feel that pain in
23 the finger jamming up.

24 Q. How long was your dress?

25 A. Mid knee. Mid knee.

Q. Where were Mr. Ailes' studios in relation to your studio -- or set? Let me --

A. Sets. They kept Roger's set on the sets -- we -- many of the shows use the same studio, so they break the sets between shows and then put them up. Roger had -- he did live shows in New Jersey and he did live shows also in New York. So we ran into each other almost every day in Fort Lee.

Q. When you say "we," who do you --

A. Roger and I.

Q. Do you recall ever seeing Mr. Trump on Mr. Ailes' set?

A. No.

Q. And do you recall -- sitting here today, Ms. Carroll, do you know when exactly that interview was filmed or aired?

A. I have a pretty good idea.

Q. When do you think that was filmed or aired?

A. Well, whenever that big parade was.

Q. Okay. So let's -- so thank you for just going back to that.

Let's come back, though, now to where we were, sort of where we had left off before lunch.

I think we had finished discussing the assault and sort of your immediate steps that you took. Looking sort of further out, have you had a romantic relationship since the assault?

A. No.

1 Q. Why not?

2 A. I -- the short answer is because Donald Trump raped me.

3 Q. How did that affect you in a way -- can you describe for
4 the jurors why that assault left you unable to form a romantic
5 connection?

6 A. What I did was I flirted with Donald Trump. I laughed with
7 him. I tried to be -- tried to engage him. I laughed at his
8 jokes. I found him charming. And what happened to me when I
9 was flirting? I got into serious trouble. And so I, after
10 that event, I found it's impossible for me -- if I meet a man
11 who is a possibility, it's impossible for me to even -- well,
12 to even look at him and smile. And in order to fall in love or
13 have dinner with someone, you've got to at least look at them
14 in the eye and smile, and I couldn't -- I couldn't force myself
15 to show a man that I liked that I liked them. I couldn't do
16 it. It just led to terrible consequences, hence, I didn't meet
17 anybody.

18 Q. I'm sorry to ask this so directly, but have you had sex
19 since Donald Trump assaulted you?

20 A. No.

21 Q. This person you just described to us as sort of having shut
22 down, is that how you portrayed yourself on television
23 following the assault or in public appearances?

24 A. No, I have a, I have a, I have a public self, which is
25 vibrant and wanting to help everyone, and always, always upbeat

1 MR. TACOPINA: I'm sorry. I really just don't --

2 THE COURT: Sustained.

3 MR. FERRARA: I will withdraw that question.

4 BY MR. FERRARA:

5 Q. How do you feel about not having been in a relationship
6 since the mid '90s?

7 A. I feel I have lost out. I'm sorry. I am a happy person
8 basically, but I'm aware that I have lost out on one of the
9 glorious experiences of any human being. Being in love with
10 somebody else, making dinner with them, walking the dog
11 together. I don't have that. I am -- and just cuddling on the
12 sofa, watching TV, and eating popcorn. I am aware of how much
13 I have lost and I feel, here's the thing, I feel like I should
14 be able to overcome it.

15 Q. I want to come back to your second marriage to Mr. Johnson,
16 John Johnson. Was there violence in that relationship?

17 A. Yes.

18 Q. What kind of violence?

19 A. Well, we were -- it was a very passionate marriage, very
20 passionate, very hot, very tempestuous, lots of fun, I mean, we
21 would laugh so hard I would literally fall out of my chair.

22 But on the flip side of that is we argued. We were
23 dog and cat.

24 Q. Was there violence?

25 A. Yes.

1 A. Because he -- Cam didn't -- it was not violent.

2 Q. Has -- sorry?

3 A. The incident in Bergdorf's was very violent.

4 Q. I want to -- for clarification, was the -- you mentioned
5 William Goldman. Was your relationship with William Goldman
6 before or after Mr. Trump assaulted you?

7 A. Before.

8 Q. Have you ever been diagnosed with any mental health
9 conditions such as PTSD or depression?

10 A. No.

11 Q. Have you taken any medication for depression or anxiety?

12 A. No.

13 Q. Are you a happy person, Ms. Carroll?

14 A. I am a happy person. I know it seems strange to hear me
15 after today, but I'm basically a happy person. But I think I
16 could work on a few things.

17 Q. How often, if at all, do you think about the assault that
18 night at Bergdorf's?

19 A. Well, that very night the visions would wash over me. I
20 couldn't -- it was horrible. Not only did it happen in
21 Bergdorf, but it happened over and over and over in my mind
22 because I did not have the ability to strike to get the visions
23 out of my head.

24 As I learned to deal with the sudden intrusions, I got
25 better and better at moving them aside. And so they -- I've

1 had them ever since the attack. They were more frequent right
2 after the attack and they stayed about -- I had -- I would be
3 going about my normal day, I would be walking the dog, I would
4 be hiking on -- hiking, and suddenly up would come the vision.
5 Those types of intrusions happened regularly. I didn't know
6 when they would come, I didn't know when to expect them, but
7 they would absolutely take over my brain. I would move them
8 aside. So that was fairly frequent.

9 Q. Can you give the jurors a sense or examples of what -- what
10 would you see? What does a vision sort of look like?

11 A. Just recently, I pulled over to the side of the high -- of
12 the road on my way home because it was late and I thought I
13 would rest my eyes and just take a quick nap. I closed my
14 eyes. I must have fallen asleep. Because when I woke, I felt
15 Donald Trump again on top of me, his huge -- I thought for a
16 minute I was going to die because I couldn't breathe. That's
17 the sudden, horrible kind.

18 But normally I would be cooking pasta or just going
19 about my normal day, and in would slide just a picture of him
20 going like this into the dressing room or hitting my head or
21 feeling his fingers jammed up inside of me and then with effort
22 I could move those out of my mind. I think everybody has
23 visions coming up.

24 Q. Were there specific -- are there specific things, were
25 there specific things that triggered these visions?

N4RMCAR2

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13 APPEARANCES

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25 W. PERRY BRANDT

Attorney for Defendant

N4RMCAR2

Carroll - Direct

1 Q. Why did you agree in the first place?

2 A. I was a big admirer of Ivy's work.

3 Q. Why did you stop filming?

4 A. Because this lawsuit became very important, and Ivy and I
5 decided together, we should cease.

6 Q. Have you received any payments for that documentary?

7 A. No.

8 Q. I want to call your attention -- I think this is sort of
9 the last topic. I want to call your attention to October of
10 2022.

11 A. Yes.

12 Q. Do you recall, what, if any, additional relevant statements
13 did Donald Trump make at that time?

14 A. Just when I had managed to get my Substack up and running,
15 get my career a little bit back and feeling that things were
16 going to be OK, Donald Trump posted on social media every
17 single thing that I was suing him for. He repeated it on
18 October 12 and then added the fact that he thought the justice
19 system in America was broken, and one of the prime examples of
20 the justice system being broken was my suing him.

21 Q. Let me show you what has been marked for identification as
22 Plaintiff's Exhibit 4.

23 Do you recognize this?

24 A. Yes.

25 Q. What is it?

N4RMCAR2

Carroll - Direct

1 keep moving.

2 Q. Are you on Truth Social, Ms. Carroll?

3 A. Yes.

4 Q. How did you find out about this statement?

5 A. I heard from several people that he had posted it.

6 Q. How, if at all, do you believe this statement affected your
7 reputation?

8 A. I really thought I was gaining back a bit of ground. I
9 thought, it's starting to go and I felt, you know, happy that,
10 you know, I was back on my feet, had garnered some readers, and
11 feeling pretty good, and then, boom, he knocks me back down
12 again.

13 Q. Were you surprised by the statement?

14 A. Stunned.

15 Q. Why?

16 A. Because I'm suing him for saying these very things.

17 Q. In light of Mr. Trump's October 22 statement, did you file
18 a second lawsuit?

19 A. Yes.

20 Q. Is that second lawsuit why we are here today?

21 A. Yes. This is why we are here.

22 Q. What did you sue him for in the second lawsuit?

23 A. I sued him for defamation of character.

24 Q. Anything else?

25 A. Yes. I also sued him for assault.

N4RMCAR2

Carroll - Direct

1 Q. Why didn't you sue him for assault in the first lawsuit?

2 A. Because the time period allowed was -- it had passed, and I
3 could not do it.

4 Q. What happened that allowed you to do it -- to sue him for
5 assault in the second lawsuit?

6 A. The state assembly and the state senate passed what they
7 called the Adult Survivors Act, and it gave survivors of sexual
8 assault, sexual abuse, sexual harassment a one-year window to
9 come forward and bring suit against the people.

10 Q. Had you advocated for passage of that law?

11 A. Yes.

12 Q. Why.

13 A. Because I understand why women, particularly, and some men
14 do not come forward and tell what happened. It takes sometimes
15 years to get the courage to face the person who hurt you, if at
16 all. It takes years. And some maturity and some age. It
17 takes -- there are many people, reasons why people don't report
18 it, and this act gives us a chance to be heard.

19 Q. What, if any, I'll call it sort of public response did you
20 experience after Mr. Trump made his October 2022 statement?

21 A. It was not very nice.

22 Q. What do you recall?

23 A. Just a wave of slime. It was very seedy comments, very
24 denigrating. Almost an endless stream of people repeating what
25 Donald Trump says, I was a liar and I was in it for the money,

N4RMCAR2

Carroll - Direct

1 can't wait for the payoff, working for the democrats, over and
2 over. But the main thing was way too ugly. It is very hard to
3 get up in the morning and face the fact that you're receiving
4 these messages you are just too ugly to go on living,
5 practically.

6 Q. Let me show you what has been marked for identification as
7 Plaintiff's Exhibit 45.

8 Do you recognize this, Ms. Carroll?

9 A. Yeah. I think it was -- it appeared -- yeah.

10 Q. What is it?

11 A. It's a tweet.

12 Q. What is the date?

13 A. October 13.

14 Q. Of what year?

15 A. 2022.

16 Q. Is your name mentioned?

17 A. I guess that is me.

18 MR. FERRARA: Your Honor, plaintiff offers 45.

19 THE COURT: Received.

20 (Plaintiff's Exhibit 45 received in evidence)

21 MR. FERRARA: Mr. Lam, we can publish this for the
22 jurors. Thank you.

23 If we just focus on the tweet in the upper left, the
24 sort of main tweet.

25 Q. Ms. Carroll, this was the day after Mr. Trump's statement?

N4r2Car3

Carroll - Cross

1 give you a specific date of the alleged incident, either,
2 right?

3 A. No.

4 Q. They couldn't.

5 A. No.

6 Q. You couldn't.

7 A. No.

8 Q. No one.

9 A. I wish to heaven we could give you a date. I wish we could
10 give you a date.

11 Q. In fact, they couldn't even tell you the year, whether it
12 was 1995 or 1996?

13 A. Oh, no, no. Lisa believes that because she published a
14 sort of a bombshell New York magazine piece about Mar-a-Lago
15 being opened as a club and Donald Trump had personally invited
16 Lisa to come down to do the story of the opening of the club,
17 New York magazine published it February -- in February. I'm
18 not quite sure of the date. Lisa believes she never would have
19 accepted that assignment if it had happened before she went
20 down to Florida. So that places it definitely in 1996.

21 Q. Okay. And certainly you or them couldn't tell you whether
22 it was the fall or the spring. You have testified to that?

23 A. No, Lisa believes that it was in the spring of '96 because
24 of the New York magazine articles. She swears up and down that
25 she would never go if she had heard about what Trump did to me

N4RMCAR4

Carroll - Cross

1 Q. It's your testimony that when Donald Trump, this big and
2 heavy man, lunged at you and banged your head against the wall
3 so hard it hurt, you still didn't think it was serious at that
4 point?

5 A. I was trying to figure out what the hell was going on.
6 This is a man. This is Donald Trump. I thought I knew him.
7 We had just been laughing 12, 15 seconds before. And here I am
8 being pushed up against the wall. I had no idea. It took me
9 several seconds to process what the heck was going on. It
10 didn't make any sense. It didn't make any sense at all.

11 Then he put his mouth against mine. Then I
12 understood. OK.

13 Q. In fact, you viewed what went on in that dressing room as a
14 fight.

15 A. Yes.

16 Q. In fact, in response to this supposedly serious situation
17 that you viewed as a fight, where you got physically hurt, it's
18 your story that you not only didn't scream out, but you started
19 laughing?

20 A. I did not scream. I started laughing. That is right. I
21 don't think I started laughing. I think I was laughing going
22 into the dressing room, and I think I laughed pretty
23 consistently after the kiss to absolutely throw cold water on
24 anything he thought was about to happen. Laughing is a very
25 good -- I use the word weapon -- to calm a man down if he has

N4RMCAR4

Carroll - Cross

1 any erotic intention.

2 Q. According to you, after Donald Trump had you against the
3 wall, he pulled your tights down?

4 A. Yes.

5 Q. It's your story that at some point you felt his penis
6 inside of you?

7 A. Yes.

8 Q. But before that, it's your sworn testimony that you felt
9 his fingers, what you said was rummaging around your vagina?

10 A. It's an unforgettable feeling.

11 Q. Now, when you say rummaging around your vagina, that's
12 different than inserting a finger inside your vagina.

13 A. At first he rummaged around and then he put his finger
14 inside me.

15 Q. In your book you wrote that he was forcing his fingers
16 around my private area and then thrust his penis halfway
17 completely, I'm not certain, inside me. Is that accurate?

18 A. Yes.

19 Q. And this attack or this fight, based on your word, this
20 fight that you were in, could have taken as long as three
21 minutes?

22 A. From entering the dressing room to my leaving it, I don't
23 think it could be any more than three minutes. I may be wrong.
24 I didn't have a stopwatch, but it was about three minutes.

25 Q. Even though you understood you were in the middle of this

N4RMCAR4

Carroll - Cross

1 supposed battle, you never screamed at Donald Trump or screamed
2 for help?

3 A. I'm not a screamer.

4 Q. You said that yesterday, I'm not a screamer, right?

5 A. I'm not a screamer. Here is the thing. I was too much in
6 a panic to screech. I was fighting.

7 Q. When you're fighting and being sexually assaulted and
8 raped, because you are not a screamer, as you describe it, you
9 wouldn't scream?

10 A. I'm not a screamer. You can't beat up on me for not
11 screaming.

12 Q. I'm not beating up on you. I'm asking you questions,
13 Ms. Carroll.

14 A. No. Women who come forward, one of the reasons they don't
15 come forward is because they are always asked why didn't you
16 scream. Some women scream. Some women don't. It keeps women
17 silent.

18 Q. And, according to you, this attack wasn't taking place in
19 some secluded place in the middle of nowhere in a forest. That
20 was in a crowded department store in New York City.

21 A. Yes. Not crowded, though.

22 Q. Right. The inconceivable part, right?

23 MR. FERRARA: Objection, your Honor.

24 THE COURT: Sustained.

25 Q. When you spoke with Dr. Lebowitz after filing your lawsuit,

N4RMCAR4

Carroll - Cross

1 you were still trying to come up with an explanation for your
2 story as why you did not scream.

3 A. I wasn't coming up with a story. It's usually -- I would
4 say more than usually under discussion when a woman is raped
5 and she doesn't scream. It's usually discussed, why didn't she
6 scream. Why didn't you scream, E. Jean? Why didn't you
7 scream? It's what a woman -- you better have a good excuse why
8 you didn't scream. Because if you didn't scream, you weren't
9 raped. I'm telling you, he raped me, whether I screamed or
10 not.

11 Q. You need a minute, Ms. Carroll?

12 A. No. You go right on.

13 Q. Aside from you not being a screamer, another reason you
14 gave for possibly not screaming was because you were wondering
15 if the pressure Donald Trump's shoulder placed against your
16 chest interfered with your ability to scream, correct?

17 A. It could be. I don't need an excuse for not screaming.

18 Q. OK.

19 Despite that, you certainly wish your story included
20 you having screamed?

21 A. Of course I do. More people would have believed me if I
22 had screamed.

23 Q. Aside from not being a screamer, and perhaps his chest was
24 interfering with your ability to scream, along the same lines
25 at some point you prepared a list of questions -- list of

N4r2Car5

Carroll - Cross

1 BY MR. TACOPINA:

2 Q. So that's a question that you anticipate being asked and
3 that question was why didn't you scream?

4 A. Right.

5 Q. And you wrote down "too much adrenaline powering through me
6 to think to scream." Do you see that?

7 A. Yeah.

8 Q. So that's the third potential reason why you didn't scream
9 you have testified to.

10 A. It's another reason why I didn't scream.

11 Q. Now, according to this, screaming would have been a purely
12 voluntary action you need to think about before doing?

13 A. Mr. Tacopina, if I was going to make up a lie, I would have
14 lied when I was writing this and say I screamed my head off. I
15 didn't. When I came forward, I told the truth. I said I
16 didn't scream. We could probably come up with more reasons I
17 didn't scream, but I did not scream. I did not scream.

18 Q. Well, Ms. Carroll, the reason why you wrote that you wish
19 you had screamed was why? Why did you write you wish you had
20 screamed?

21 A. Because more people would have believed me.

22 Q. How about more people may have heard you and helped you?
23 Is that a possibility?

24 A. No, I didn't want to make a scene.

25 Q. Oh. So you didn't scream while you were getting violently

N4r2Car5

Carroll - Cross

1 raped because didn't you want to make a scene?

2 MR. FERRARA: Objection, your Honor.

3 THE COURT: Overruled.

4 Q. You could answer.

5 A. Repeat your question.

6 Q. Sure. So you didn't scream while you were getting
7 violently raped because you didn't want to make a scene.

8 A. That's right. That's probably why I didn't scream.

9 Q. Okay.

10 Now, with the specifics to the rape allegation, Donald
11 Trump, you said, had his penis inside of you while your tights
12 were obviously still down?

13 A. Yes.

14 Q. And to be clear, it's your story that Donald Trump did not
15 take off your tights?

16 A. No, no, just pulled down. They were still above the knees.

17 Q. They were above the knees.

18 A. Um-hmm.

19 Q. And because your tights were above the knees, you couldn't
20 get your knee up?

21 A. I couldn't get it all the way up. I finally got it up,
22 though.

23 Q. Okay.

24 And it's your story that you tried to stomp on his
25 foot.

N4r2Car5

Carroll - Cross

1 night.

2 Q. Okay. Do you remember the time?

3 A. It was right after work, 5 or 6.

4 Q. Okay. And according to you, after hearing your story,
5 Ms. Martin told you to tell no one about it.

6 A. Emphatically.

7 Q. Emphatically.

8 And it's your testimony you took Ms. Martin's advice
9 not to go to the police?

10 A. That's the advice I wanted, and so that's the advice I
11 followed.

12 Q. So after speaking to Ms. Martin, you never told anyone else
13 about this alleged attack apart from that related to this
14 litigation and subsequently the book that came out in 2019,
15 correct?

16 A. That's correct.

17 Q. Now, the reason, I think you testified yesterday, was Carol
18 Martin told you not to go to the police because Donald Trump
19 was powerful?

20 A. Yes.

21 Q. And you were frightened of Donald Trump at the time.

22 A. He was not only powerful, he was rich, he was famous, and,
23 as Carol put it, he has 200 lawyers.

24 Q. And because of him being powerful, you didn't go to the
25 police. You didn't want to tell your story.

N4r2Car5

Carroll - Cross

1 A. I don't -- no, I did not want to tell my story. I did not
2 want to -- I was ashamed of myself.

3 Q. But one of the reasons Carol Martin told you not to tell
4 the story to anyone and one of the reasons you have testified
5 that you never told the story to anyone was because of Donald
6 Trump's power.

7 A. I was afraid Donald Trump would retaliate, which exactly is
8 what he did. That's exactly. One of my biggest fears came
9 absolutely true.

10 Q. Okay.

11 A. He has two tables full of lawyers here today. It came
12 absolutely true.

13 Q. We have about the same amount of lawyers. Not everyone is
14 a lawyer, Ms. Carroll, but regardless of that --

15 THE COURT: Come on, Mr. Tacopina, let's move along.

16 MR. TACOPINA: Yes, sir.

17 BY MR. TACOPINA:

18 Q. So instead you waited for Donald Trump to become arguably
19 the most powerful man in the world, president of the
20 United States of America, to tell your story to everybody.

21 A. I waited until other women -- I was not a pioneer. I'm a
22 follower. I saw other women coming forward after Harvey
23 Weinstein and I thought who am I? Who am I not to stay silent?
24 Also, I was 78 or 79. I just thought I've been silent too
25 long.

N4r2Car5

Carroll - Cross

1 on you?

2 A. They couldn't be seen. You can't see inside my vagina as I
3 am driving home. No, you can't see it.

4 Q. How about the head? You said your head --

5 A. No. My hair would cover it. It was probably a bump on the
6 back. I could feel the bump, but that's covered.

7 Q. Did you show Carol Martin the bump?

8 A. No.

9 Q. No, you didn't.

10 A. Well --

11 THE COURT: There is no question.

12 A. I don't know.

13 THE COURT: Ms. Carroll, there is no question.

14 THE WITNESS: Okay.

15 BY MR. TACOPINA:

16 Q. And you never went to the police to report this alleged
17 incident?

18 MR. FERRARA: Objection. Asked and answer.

19 THE COURT: Mr. Tacopina --

20 MR. TACOPINA: Did I ask that already?

21 THE COURT: I'm out -- well, I'm not going to be
22 guilty of hyperbole, but plenty.

23 MR. TACOPINA: Okay, your Honor.

24 BY MR. TACOPINA:

25 Q. Well, let me ask you this question anew. You would agree

N4r2Car5

Carroll - Cross

1 that not reporting this alleged attack to the police is a very
2 odd fact, to use your words?

3 A. No, that's not an odd fact. As a matter of fact, it --
4 many women do not go to the police. I understand why.

5 Q. Okay. So it's not an odd fact that you didn't report it to
6 the police.

7 A. No, it's not. It's the usual fact.

8 MR. TACOPINA: Put up AA in evidence, please.

9 Q. It's from your book, Ms. Carroll, page 242, lines 9-12.

10 Actually, let's get counsel get situated. AA in evidence, page
11 242, lines 9-12.

12 MR. FERRARA: Just one moment, your Honor.

13 (Counsel confer)

14 (Continued on next page)

N512carl

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 E. JEAN CARROLL,

4 Plaintiff,

New York, N.Y.

5 v.

22 Civ.10016 (LAK)

6 DONALD J. TRUMP,

7 Defendant.

-----x

Jury Trial

8 May 1, 2023

9 9:30 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge
and a Jury

13 APPEARANCES

14 KAPLAN HECKER & FINK LLP

15 Attorneys for Plaintiff

16 BY: ROBERTA A. KAPLAN

MICHAEL J. FERRARA

17 SHAWN G. CROWLEY

MATTHEW J. CRAIG

18 TACOPINA SEIGEL & DeOREO

19 Attorneys for Defendant

20 BY: JOSEPH TACOPINA

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21 MATTHEW G. DeOREO

22 HABBA MADAIO & ASSOCIATES, LLP

Attorneys for Defendant

23 BY: ALINA HABBA

24 MICHAEL T. MADAIO

25 W. PERRY BRANDT

Attorney for Defendant

N512Car3

Carroll - Cross

1 BY MR. TACOPINA:

2 Q. Okay. So what you were saying was that obviously you were
3 making more money with your Substack podcast than you had done
4 previously?

5 A. Yes.

6 Q. Okay. And the reason you were able to make more money with
7 your podcast following your accusations against Donald Trump is
8 because of the number of people who subscribed to your podcast.

9 MR. FERRARA: Objection.

10 THE COURT: Overruled.

11 A. In part, yes.

12 Q. Now, it would be fair to say, Ms. Carroll, that your life
13 has been fabulous since your book came out.

14 A. That is what I like my life to appear to be.

15 Q. Okay. As a matter of fact, that's what you said, correct,
16 in the past?

17 A. I say it quite a bit. That is how I want people to
18 perceive me. Underneath my private self is another thing
19 altogether.

20 Q. Well, you were going on all these TV shows and podcasts
21 after the allegations came out and, for example, in December of
22 2019, you -- that was one month after you filed your initial
23 lawsuit against Donald Trump, right? December 2019?

24 A. Yes.

25 Q. Yeah. So you appeared on a podcast called the Maris

N512Car3

Carroll - Cross

1 Review, BV.

2 Please show it to the witness.

3 Do you remember the Maris Review podcast?

4 A. Yes.

5 Q. We don't have to play that now. It's okay. Take it down.

6 During that podcast, you confirmed that your life had
7 been fabulous since the book came out, right?

8 THE COURT: Sustained as to form.

9 MR. TACOPINA: Yeah.

10 BY MR. TACOPINA:

11 Q. During that podcast, you confirmed or you stated that your
12 life had been fabulous since the book came out.

13 A. I always say my life is fabulous. No matter who asks me,
14 what time of day, I will always reply it's fabulous.

15 Q. Except in this courtroom in front of this jury?

16 A. In this courtroom I am being forced to tell the truth.

17 Q. So all these TV shows and all these podcasts and in your
18 book where you say how great your life is, that's all lies?

19 A. No. I want -- if I walked in the courtroom today and you
20 said: Hi, E. Jean. How are you? I would have said: Fine.

21 I'm fabulous. It is my -- it is the way I present myself to
22 the world. It's E. Jean the writer, E. Jean the advice
23 columnist. I am the one, rightly or wrongly, I see myself as
24 solving other people's problems. That is what my Substack is.
25 That is what I have done for almost 29 years. So I always say

N512Car3

Carroll - Cross

1 I'm fine. The column is not called E. Jean Asks Other People
2 For Their Advice. It's called Ask E. Jean. I put up a front.

3 Q. Right. I'm not talking --

4 A. That's what I said.

5 Q. -- about your column, your advice column, Ms. Carroll, I'm
6 talking when you go on TV or radio or interviews or podcasts
7 and are asked about the incident with Donald Trump, you always
8 say that you are fabulous now.

9 A. Of course I do.

10 Q. Okay.

11 A. I don't want anyone to know I suffered. I did not and
12 still don't, unfortunately, during this trial I have to reveal
13 what is actually going on, but up until now, I would be ashamed
14 to know -- let people know what is actually going on.

15 Q. You also explain on that podcast that you were receiving
16 lots of support --

17 A. Um-hmm.

18 Q. -- since your book came out?

19 A. Um-hmm.

20 Q. Yes?

21 THE COURT: Please answer with words.

22 A. Yes.

23 Q. And you confirm you were receiving lots of love?

24 A. Yes.

25 Q. In fact, you were receiving several invitations to parties

N515car6

Carroll - Redirect

1 somehow still alive. That was -- really. It took me minutes,
2 well seconds, and then minutes. And even when Lisa said it, it
3 took a real effort for me to take it in.

4 Q. Was -- sorry.

5 A. Yes. Lisa is the one who focused my brain for that moment.
6 It was Lisa saying that.

7 Q. Was there ever any doubt in your mind that Mr. Trump had
8 penetrated you with his fingers and penis?

9 A. Oh, never a doubt about that.

10 Q. Was there a doubt in your mind that you tried to shove him
11 away?

12 A. Oh, no. There was never a doubt about that.

13 Q. Was there ever a doubt in your mind regarding whether you
14 had consented to this, to what he had done to you?

15 A. Never. The minute that door shut I -- there was no
16 consent.

17 Q. Was there ever a doubt in your mind that you hit him in the
18 head with your purse?

19 A. I believe I hit him in the head with my purse that year.

20 Q. Was there ever a doubt in your mind that you tried to fight
21 him off?

22 A. No. Never. That's how I got out.

23 Q. Before you spoke to Ms. Birnbach how, if at all, have you
24 processed all of that information?

25 A. Before I had?

N515car6

Carroll - Recross

1 persona. So, are you happy or are you not happy now?

2 A. I'm happy.

3 Q. OK.

4 A. With undertones.

5 Q. Happy with undertones?

6 A. Of -- of --

7 Q. OK. Shall I go on?

8 A. Of unhappiness.

9 Q. The answer is you are happy with undertones of unhappiness?

10 A. Yes. It goes up and down, it is not always totally buoyant
11 and gleeful and happy. There are times when I feel unhappy, of
12 course.

13 Q. You testified on redirect that you were astonished that in
14 2023 someone would ask you about not screaming. Do you
15 remember saying that?

16 A. Yes.

17 Q. Do you understand, Ms. Carroll, that I'm not judging what
18 is the appropriate reaction for any true rape victim, I was
19 questioning the fact that you gave four different answers for
20 not screaming?

21 THE COURT: Sustained. The jury will disregard that
22 remark.

23 Q. Well, the reason you gave for not screaming was, one, you
24 are not a screamer.

25 A. Right.

N515car6

Carroll - Recross

1 Q. You also said that Donald Trump's chest interfered with
2 your screaming?

3 A. I guess I did.

4 Q. Do you recall saying that you had too much adrenaline to
5 think to scream?

6 A. That makes sense.

7 Q. OK. And then lastly you said you didn't scream because you
8 didn't want to make a fuss?

9 A. I'm sure all -- you can have many reasons for not
10 screaming.

11 Q. You understand that's what I was asking you about?

12 A. Yes.

13 THE COURT: Now, look. You understand that that's not
14 an appropriate question so move on.

15 MR. TACOPINA: OK, your Honor. I thought based on the
16 answer it was but I'm sorry, I will move on.

17 THE COURT: Mr. Tacopina, you get to have a closing
18 argument in this case and it is after I instruct the jury.

19 MR. TACOPINA: OK. Fine.

20 THE COURT: Or before, actually, but...

21 BY MR. TACOPINA:

22 Q. In evidence is Defendant's Exhibit AR that was already
23 introduced into evidence, subject to redaction, but the portion
24 we have shown before we will show again. Ms. Carroll, you
25 prepared questions, you recall, when you were getting ready for

N582CAR1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 E. JEAN CARROLL,

4 Plaintiff,

New York, N.Y.

5 v.

22 Civ.10016 (LAK)

6 DONALD J. TRUMP,

7 Defendant.

-----x

Jury Trial

8 May 8, 2023

9 9:10 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge
and a Jury

13 APPEARANCES

14 KAPLAN HECKER & FINK LLP

15 Attorneys for Plaintiff

16 BY: ROBERTA A. KAPLAN

MICHAEL J. FERRARA

17 SHAWN G. CROWLEY

MATTHEW J. CRAIG

18 TACOPINA SEIGEL & DeOREO

19 Attorneys for Defendant

20 BY: JOSEPH TACOPINA

CHAD D. SEIGEL

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22 HABBA MADAIO & ASSOCIATES, LLP

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24 MICHAEL T. MADAIO

25 W. PERRY BRANDT

Attorney for Defendant

N585car2

Summation - Ms. Kaplan

1 using the word rape. But as we heard Dr. Lebowitz explain,
2 E. Jean's refusal to call what happened to her rape or to
3 identify herself as a victim does not mean that she was not
4 sexually assaulted.

5 Now, another way that Donald Trump responds to all of
6 this is by trying to get you to believe in the big lie. What
7 do I mean when I say the big lie? I mean that Mr. Trump's
8 lawyers need you to find that not only E. Jean Carroll, but
9 also Lisa Birnbach and Carol Martin are all lying, that they
10 are all part of some part of coordinated conspiracy, that they
11 somehow joined forces and agreed to come up with a story about
12 an assault that happened nearly 30 years ago simply because
13 they hate Donald Trump. I'm sorry. Seriously? That's just
14 ridiculous.

15 First of all, there is no evidence -- not a shred --
16 that any such conspiracy exists. No testimony. No documents.
17 Nowhere in all of those pages of e-mails and texts between
18 E. Jean Carroll, Lisa Birnbach, and Carol Martin did you see
19 anything suggesting that they all agreed to come up with a lie
20 that Donald Trump raped E. Jean Carroll. In fact, you saw the
21 opposite of that. You heard Ms. Martin read from a text she
22 sent to a friend in 2021 -- a friend, so it is not Lisa
23 Birnbach and she is not texting E. Jean Carroll -- another
24 friend, in which she expressed frustration that she was dealing
25 with the publicity from this case and she suggested that that

N585car6

Rebuttal - Mr. Ferrara

1 didn't care about the person you lost? Of course not. And
2 Dr. Lebowitz explained this to you too. She told you that
3 Ms. Carroll doesn't blame Bergdorf's. It wasn't the store that
4 assaulted her, it was Donald Trump. That's at page 883 of the
5 transcript. Or, the point about having, you know, kept the
6 dress she was wearing when Trump assaulted her. This is
7 something Ms. Carroll told you herself. If she is going to
8 lie, why not say she destroyed the dress? Why not say I
9 destroyed it, I don't have it anymore. Who could ever prove
10 her wrong? Because she told you the truth, good or bad. She
11 kept the dress because it was beautiful and it was her nicest
12 dress, and Dr. Lebowitz explained that.

13 Or how about watching *The Apprentice*? Dr. Lebowitz
14 explained the reaction Ms. Carroll had when Ms. Carroll first
15 saw the trailer for *The Apprentice*. You guys remember this?
16 Ms. Carroll was sitting in a meeting and someone showed the
17 trailer for *The Apprentice* and Ms. Carroll completely froze and
18 couldn't speak. This is at page 884 of the transcript. But at
19 the same time, as Dr. Lebowitz told you, *The Apprentice* was a
20 show that everyone in Ms. Carroll's social circle was watching
21 at that time and if she hadn't, she would have sort of stood
22 out.

23 I think the point is that Ms. Carroll is entitled to
24 find happiness again in her life, to focus on the positive
25 things in life and work to be the happiest, best version of

N585car6

Rebuttal - Mr. Ferrara

1 herself, and it feels like the defense has this idea of the
2 perfect rape victim and in their version it goes something like
3 this: The perfect rape victim doesn't flirt. The perfect rape
4 victim screams. The perfect rape victim never goes back to
5 where they were raped. The perfect rape victim tells the
6 police but otherwise never discusses the rape publicly. The
7 perfect rape victim burns whatever clothes they were wearing.
8 The perfect rape victim never laughs again, never jokes around.
9 The perfect rape victim never again has success in their
10 career. The perfect rape victim never looks at their rapist
11 again. The perfect rape victim never tries to hold their
12 rapist accountable, never gets their day in court. And, the
13 perfect rape victim is never happy again.

14 That's the defense's out-of-date, out-of-touch view.
15 It is as wrong as it is offensive. Dr. Lebowitz explained to
16 you why it is wrong. For example, she talked about victims who
17 don't scream, even if they're being raped in the stacks of the
18 public library. That's at page 857 of the transcript. But you
19 also know it is wrong because you heard from three victims of
20 sexual assault in this case, three of Donald Trump's victims
21 and they told you the same thing. Ms. Carroll couldn't process
22 what was happening and was extremely confused when Trump
23 attacked her. That's what she told you, that's at page 177.
24 Jessica Leeds told you that when Trump started groping her on
25 the airplane she didn't scream or shout and to this day she

N585car6

Rebuttal - Mr. Ferrara

1 still doesn't know why. That's at 742. And Natasha Stoyloff,
2 the *People* magazine writer, described how after Trump assaulted
3 her at Mar-a-Lago, she went into auto-pilot, as she put it, and
4 finished the interview with Trump and his wife Melania. That's
5 at 993.

6 Three women, all assaulted by Trump, none of them
7 screamed, none of them discussed it with their employers, none
8 of them wanted to be fired or sued. All of them went on with
9 their lives and careers and found happiness despite what
10 happened to them. And because they did, the defense wants you
11 to believe they were never assaulted. But, you know Donald
12 Trump assaulted every one of them. They told you that and he
13 told you that when he described how he treats women on the
14 *Access Hollywood* tape.

15 THE COURT: Let's try to wrap it up in the next five
16 minutes.

17 MR. FERRARA: Yes, sir. I have one minute and a half,
18 your Honor.

19 THE COURT: OK.

20 MR. FERRARA: The long and short of it is this, ladies
21 and gentlemen: Donald Trump's entire defense rests on calling
22 everyone a liar. He needs you to believe Ms. Carroll is a
23 liar; Lisa Birnbach, Carol Martin, liars. Natasha Stoyloff and
24 Jessica Leeds, he has to call them liars. Even Robert Salerno
25 and Cheryl Beall, I guess they're lying, too, when they talk

N592CAR1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 E. JEAN CARROLL,

4 Plaintiff,

New York, N.Y.

5 v.

22 Civ.10016 (LAK)

6 DONALD J. TRUMP,

7 Defendant.

-----x

Jury Trial

8 May 9, 2023

9 10:05 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge
and a Jury

13 APPEARANCES

14 KAPLAN HECKER & FINK LLP

15 Attorneys for Plaintiff

16 BY: ROBERTA A. KAPLAN

MICHAEL J. FERRARA

17 SHAWN G. CROWLEY

MATTHEW J. CRAIG

18 TACOPINA SEIGEL & DeOREO

19 Attorneys for Defendant

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22 HABBA MADAIO & ASSOCIATES, LLP

Attorneys for Defendant

23 BY: ALINA HABBA

24 MICHAEL T. MADAIO

25 W. PERRY BRANDT

Attorney for Defendant

N592Carl

Charge

1 crimes. Ms. Carroll claims that Mr. Trump is liable to her for
2 battery on three different and alternative bases, each of which
3 corresponds to a criminal law definition of a different sex
4 crime. Mr. Trump denies that he is liable to her for battery
5 on any of these three different and alternative bases.
6 Accordingly, the first set of questions in the verdict form has
7 to do with whether or not Ms. Carroll has established that
8 Mr. Trump's conduct, if any, came within any of those criminal
9 law definitions. But I emphasize to you that this is a civil
10 case for damages. It is not a criminal case.

11 Now, if you look on the verdict form, you will see the
12 first question is whether Ms. Carroll proved by a preponderance
13 of the evidence that Mr. Trump raped her. It's a yes/no
14 question. I am going to explain the preponderance of the
15 evidence standard, which is incorporated in that question,
16 later on. But right now I am going to tell you the required
17 elements of rape under the New York law.

18 In order to establish that Mr. Trump raped her,
19 Ms. Carroll must prove each of two elements by a preponderance
20 of the evidence.

21 The first element is that Mr. Trump engaged in sexual
22 intercourse with her.

23 The second element is that Mr. Trump did so without
24 Ms. Carroll's consent by the use of forcible compulsion. So
25 let me define each one of those terms.

N592Carl

Charge

1 "Sexual intercourse" means any penetration, however
2 slight, of the penis into the vaginal opening. In other words,
3 any penetration of the penis into the vaginal opening,
4 regardless of the distance of penetration, constitutes an act
5 of sexual intercourse. Sexual intercourse does not necessarily
6 require erection of the penis, emission, or an orgasm.

7 Now, of course, I hope you will forgive me for this
8 very explicit language, but I have no alternative—nobody has
9 in this case—in discussing the elements of the alleged
10 battery.

11 I also used the phrase "forcible compulsion," and what
12 that means is intentionally to compel by the use of physical
13 force.

14 If you find that Ms. Carroll has proved by a
15 preponderance of the evidence both of those two elements, you
16 will answer Question 1 "yes." If you answer Question 1 "yes,"
17 I instruct you that Mr. Trump thus committed battery against
18 Ms. Carroll. There would be no need to consider whether he
19 committed battery on either of the other two alternative bases.
20 Remember, I said there were three alternatives. So if you
21 answer Question 1 "yes," you will skip question 2 and question
22 3 on the verdict form and go right on to question 4. If you
23 find that Ms. Carroll has not proven either of the two elements
24 of rape by a preponderance of the evidence, you must answer
25 "no" to Question 1 and go on to Question 2, which deals with

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1 the second of the three alternative bases for the battery
2 claim.

3 The second theory of battery corresponds to something
4 called sexual abuse. Sexual abuse has two elements. In order
5 to establish that Mr. Trump sexually abused her, Ms. Carroll
6 must prove each of two elements by a preponderance of the
7 evidence.

8 The first element is that Mr. Trump subjected
9 Ms. Carroll to sexual contact.

10 The second element is that he did so without
11 Ms. Carroll's consent by the use of forcible compulsion.

12 So let me define "sexual contact" for you. Sexual
13 contact for this purpose means any touching of the sexual or
14 other intimate parts of a person for the purpose of gratifying
15 the sexual desire of either person. It includes the touching
16 of the actor by the victim, as well as the touching of the
17 victim by the actor, and the touching may be either directly or
18 through clothing.

19 Now, I just used the term or the phrase "sexual or
20 intimate part" in defining sexual contact. For this purpose, a
21 "sexual part" is an organ of human reproduction.

22 So far as intimate part is concerned, the law does not
23 specifically define which parts of the body are intimate.
24 Intimacy, moreover, is a function of behavior and not just
25 anatomy. Therefore, if any touching occurred, the manner and

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1 play. I previously instructed you about "actual malice" with
2 regard to Question 8. With regard to Question 10, I'm using
3 the words "malice" or "maliciously," not the phrase "actual
4 malice," and the word "malice" and the word "maliciously" for
5 purposes of Question 10 means something different from "actual
6 malice." A statement is made with malice or it's made
7 maliciously for the purpose of Question 10 if it's made with
8 deliberate intent to injure or made out of hatred or ill will
9 or spite or made with willful or wanton or reckless disregard
10 of another's rights.

11 If you answer "yes" to the first part of Question
12 10—in other words, if you find that Mr. Trump acted with
13 malice, as I have just defined that term for you, in making the
14 October 12 statement about Ms. Carroll—you will write down an
15 amount, if any, that you find Mr. Trump should pay to
16 Ms. Carroll in punitive damages for the defamation. If you
17 answer "no" to that first part of Question 10—that is, you
18 find that Mr. Trump's statement was not made maliciously—you
19 may not award punitive damages. Ms. Carroll bears the burden
20 of proving by a preponderance of the evidence that Mr. Trump
21 acted in accordance with this standard.

22 In arriving at your decision as to the amount of
23 punitive damages, you should consider here with respect to the
24 defamation punitive damage claim:

25 The nature and reprehensibility of what Mr. Trump did

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1 the issues in Question 7, which is the falsity of the statement
2 of October 12 and Question 8, actual malice, by clear and
3 convincing evidence, you must decide against her on those
4 issues. What does "clear and convincing evidence" mean? Clear
5 and convincing evidence is a more exacting standard than proof
6 by a preponderance of the evidence, where you need believe only
7 that a party's claim is more likely true than not. On the
8 other hand, clear and convincing evidence, clear and convincing
9 proof, is not as high a standard as the burden of proof applied
10 in criminal cases, beyond a reasonable doubt. Clear and
11 convincing proof leaves no real substantial doubt in your mind.
12 It is proof that establishes in your mind not only the
13 proposition -- not only that the proposition at issue is
14 probable, but also that it is highly probable. It is enough if
15 Ms. Carroll establishes that Mr. Trump's statement was
16 false—which is Question 7—and that he made the statement with
17 actual malice—that's Question 8—beyond any "substantial
18 doubt"; she does not have to dispel every "reasonable doubt."

19 Now, you folks, the nine of you, are the sole and
20 exclusive judges of the facts. I certainly do not mean to
21 indicate any opinion as to the facts or as to what your verdict
22 ought to be. The rulings I have made during this trial are not
23 any indication of any views on my part about what your decision
24 ought to be or as to who should prevail here. I express no
25 such opinion with respect to what you ought to do here.